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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 9991 of 1993  
with  
Special Civil Application No 11204 of 1993  
with  
Special Civil Application No.11309 of 1993  
with  
Special Civil Application No.11379 of 1993  
...

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MIRZAPUR MOTI KURESHI KASSAB

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 9991 of 1993  
MR ARUN H MEHTA, Advocate, for Petitioner  
Mr.S.N. Shelat, Additional Advocate General, with  
Ms. Ameer Yajnik, A.G.P., for respondent No.1.  
Mr. A.V. Trivedi, Advocate, for  
Mr.A.C. Gandhi, Advocate, for respondent No.2.  
MR DS SHAH, Advocate, for Respondent No. 3  
MR.KM Mehta with Mr.SC Shah, for respondent no.4.

2. Special Civil Application No 11204 of 1993

MR MB FAROOQUI, Advocate, for Petitioner  
Mr.S.N. Shelat, Additional Advocate General, with  
Ms. Amee Yajnik, A.G.P., for the respondent.

3. Special Civil Application No.11309 of 1993

Mr.M.B. Farooqui, Advocate, for the Petitioner.  
Mr.S.N. Shelat, Additional Advocate General, with  
Ms. Amee Yajnik, A.G.P., for the respondent.

4. Special Civil Application No.11379 of 1993

Mr.M.B.Farooqui, Advocate, for the Petitioner.  
Mr.S.N. Shelat, Additional Advocate General, with  
Ms. Amee Yajnik, A.G.P., for the respondent.

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CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and  
MR.JUSTICE A.R.DAVE

Date of decision: April 16, 1998

C.A.V. JUDGEMENT: (Per K. Sreedharan, C.J.)

1. Constitutional validity of Act 4 of 1994, by which Bombay Animal Preservation Act, 1954, adopted by the Gujarat State, was amended, is the issue raised in these petitions. So, we consider it advantageous to dispose of all these petitions by a common judgment. Counsel appearing on either side submitted that Special Civil Application No.9991 of 1993 be treated as the main case. We are, therefore, referring to the parties and documents as they are arrayed and marked in Special Civil Application No.9991 of 1993.

2. Bombay Animal Preservation Act, 1954 was adopted and modified by the Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960. It was amended by Gujarat Act 16 of 1961 and then by Act 23 of 1979. The State Government issued Ordinance 4 of 1993 to amend the Act. By that amendment, slaughter of bulls and bullocks was totally banned in the State of Gujarat. Provisions contained in that Ordinance were challenged in these Special Civil Applications. Pending these petitions, State Legislature passed Act 4 of 1994 for replacing the Ordinance. The Amending Act has been assented to by the President of India on 15th March, 1994. Thereupon, it was brought into force by Notification in the Gazette dated 15th March, 1994.

3. Special Civil Application No.9991 of 1993 is filed by three petitioners. First petitioner is a Trust of persons, which is carrying on the business of selling and buying bulls / bullocks and other animals for

slaughtering them and for selling their meat, as permitted by law. Some of its members carry on business of selling and trading hides, bones, guts, etc., of slaughtered animals. Second petitioner is the President of the Trust and third petitioner, Joint Secretary. Petitioners 2 and 3 are carrying on business of buying and selling bulls and bullocks, and slaughtering them for selling the meat. They are licensees for carrying on that business in accordance with law. As a result of promulgation of Gujarat Ordinance 4 of 1993, and in view of Act 4 of 1994, by which the Ordinance was replaced, their business in slaughter of bulls and bullocks has been completely banned. So, it is contended that the provisions of the Act are interfering with petitioners' fundamental right to carry on business. In other words, the contention is that the Act is violative of provisions contained in Articles 14 and 19(1)(g) of the Constitution of India. On this basis, they pray for declaring provisions of Gujarat Act 4 of 1994 as illegal, ultra vires the Constitution and unconstitutional as violative of the fundamental rights of the petitioners guaranteed under Articles 19(1)(g) and 21 of the Constitution of India.

4. On behalf of the State, Deputy Secretary, Agriculture, Cooperation and Rural Development Department filed a detailed affidavit-in-reply, dated 20.10.1993. The statements made therein are to the following effect. Ordinance 4 of 1993 was issued to amend Bombay Animal Preservation Act, 1954. It provides for total prohibition against slaughtering of cows, calves of cows, whether male or female, bulls and bullocks irrespective of their age. Improved scientific animal husbandry services in the State considerably increased average longevity of animals. As against 456 Veterinary Dispensaries and First Aid Veterinary Centres in 1960, there are 946 Veterinary Dispensaries and First Aid Centres in 1993. 31 Mobile Veterinary Dispensaries are working in 1993 as against none in 1960. 467 Intensive Cattle Development Centres have been set up. In 1960, 5,00,000 cattle were vaccinated while in 1992-'93, nearly 2,00,00,000 were vaccinated to protect them from fatal diseases. 10 Cattle Feed Factories produce 1545 metric tonnes of cattle feed per day. As a result of improved animal husbandry services, contagious diseases have been brought under control. The death of such animals in 1992-'93 was brought down to 636 as against 6689 during 1960-'61. Population of bullock is 27.39 lakhs. Over and above agricultural work, to which they are deployed, they are useful in other respects as well. Dung produced by them is the best organic manure, cheaper than chemical

manure. It can be used for production of bio-gas. Annual production of manure by bullocks is about 27300 tonnes and bio-gas production is about 13.60 lakhs cubic metres per day. If the whole dung production is utilised, it will meet the daily requirement of 54.78 lakhs persons. As on today, 1,91,467 bio-gas plants are in operation in the State and 3 to 4 lakhs people are utilising the bio-gas. Nearly 85.38 lakhs hectares of land are cultivated by using bullocks. The State has about 728300 bullock carts. About 18,83,000 ploughs are run by bullocks. Cattle dung is used as fuel. Statistics show that number of bullocks above the age of 16 years, which are slaughtered, is very small. Animals other than bullocks are slaughtered in large number. Hence, the ban on the slaughter of cow and its progeny will not affect the business of meat production to any significant extent. Sources of conventional energy have depleted. So, sources of non-conventional energy will have to be utilised. Bio-gas is one such source of non-conventional energy. Cattle dung is its main source. On this basis, it is contended that bulls and bullocks are to be preserved during their whole life span.

5. Ordinance was promulgated, it is contended, in the interest of general public. It seeks to impose only reasonable restrictions on the fundamental rights of the petitioners. Provisions in the Ordinance are meant to give effect to the provisions contained in Article 39(b) and (c), Articles 47 and 48 of the Constitution of India. Meat obtained by slaughter of bulls and bullocks is a very limited source of protein and other by-products. Protein and other by-products are available in plenty from other sources, viz., meat of other animals. Since the number of bulls and bullocks slaughtered is very few, the provision contained in the Ordinance, subsequently changed by the Act, will not adversely affect the negligible number of people, who are engaged in slaughtering of animals.

6. Another affidavit dated 17.3.1998 was sworn to by a Deputy Secretary in the Agriculture, Cooperation and Rural Development Department. It is averred therein that the impugned Act, Act 4 of 1994, was enacted in order to give effect to the policy contained in the Directive Principles, viz., those in Articles 47, 48 and clauses (b) and (c) of Article 39 of the Constitution. The object is to protect, preserve and sustain cow and its progeny. Entire cow family is necessary to support agricultural operation, for, they provide cost free and rich manure. The recent scenario of ultra modern technology of super ovulation, embryo transfer and

cloning techniques will be of very much use to propagate further from the incapable or even old animals, which are not capable of working or reproducing. These animals can be used for research programmes as well as for production of non-conventional energy sources, such as bio-gas and natural fertilisers. During 1996-'97, there were 19362 Bio-gas Plants. On an average, each adult cattle produces 4 K.Gs. of dung. As per the 1992 census, the total cattle strength is 67,85,865. They are supposed to produce 99,07,363/- tonnes of dung. 32,31,000 workers are related to livestock and forestry. 8.48 lakh hectares of land are available in Gujarat as permanent pasture and grazing land. No individual cattle owner considers one or two bullocks as an extra burden on him. Unproductive animals are being sent to Panjarapoles and 'Gosadans'. There are 335 'Gaushalas' and 174 Panjarapoles, which are run by Non-Governmental Organisations and Trusts. Beef (meat of cattle) contributes to 1.3% of total meat products. Demand for beef is less in contrast to the demand for pig, mutton and poultry meat. Number of bulls and bullocks slaughtered per year between 1990-'91 and 1993-'94 was about 9000. It is also contended that the Amending Act is protected under Article 31C of the Constitution as it has got the Assent of the President. It is, therefore, outside the challenge of being violative of the provisions contained in Articles 14 and 19 of the Constitution.

7. Private Parties, who oppose killing of cow and its progeny, including bulls and bullocks, have been made parties to these proceedings. They oppose the challenge made by the petitioners based on Articles 14 and 19(1)(g) of the Constitution. They have filed detailed affidavits, opposing the claims made by the petitioners. Since contentions raised by them are virtually identical to those raised by the Government, we do not think it is necessary to burden this judgment by summarising their contentions.

8. On the formation of the State of Gujarat, the Bombay Animal Preservation Act, 1954 was extended to be operative throughout the State by Gujarat Act 16 of 1961. To begin with, that Act applied to animals specified in the Schedule, viz., Bovines, (bulls, bullocks, cows, calves, male and female buffaloes and calves). Clause (2) of Section 2 of the 1954 Act authorised Government to extend the provisions of the Act to any other animal, which it thought desirable to preserve, by Notification in the Official Gazette. It is not stated that the Government exercised power under this provision to

include any other category of animal within the purview of the Act. Section 5 of the Act imposed ban on slaughter of any animal unless a certificate is obtained from competent authority to the effect that the animal is fit for slaughter. Clause (1A) of that Section provided that no certificate shall be granted in respect of a cow, calves of a cow, whether male or female, and if male, whether castrated or not, a bull below the age of 16 years or a bullock below the age of 16 years. Sub-section (2) of Section 5 further provided that the Competent Authority shall not grant any certificate if :-

- (a) the animal, whether male or female, or is  
useful or likely to become useful for the  
purpose of draught or any kind of  
agricultural operations;
- (b) the animal, if male, is useful or likely  
to become useful for the purpose of  
breeding; or
- (c) the animal, if female, is ..

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likely to become useful for the purpose  
of giving milk or bearing offspring.

By Act 23 of 1979, sub-section (3) was added to Section 5. It reads :-

"... Nothing in this section shall apply to-

- (a) the slaughter of any of the following  
animals for such bona fide religious  
purposes, as may be prescribed,  
namely :-

- (i) any animal above the age of  
fifteen years other than a  
cow, bull or bullock;
- (ii) a bull above the age of  
fifteen years;
- (iii) a bullock above the age of  
fifteen years;

- (b) the slaughter of any animal not being  
a cow or a calf of a cow, on such  
religious days as may be prescribed;

Provided that a certificate in writing for the slaughter referred to in clause (a) or (b) has been obtained from the Competent Authority...."

9. The amendment brought out by Gujarat Act 23 of 1979, imposing a ban on the slaughter of bulls and bullocks below the age of 16, was challenged on the ground of violative of the provisions contained in Articles 14 and 19(1)(g) of the Constitution. The matter was disposed of b...

Court in the decision in Haji Usmanbhai Hasanbhai Qureshi and others v. The State of Gujarat, AIR 1986 SC 1213. The provision was upheld by the Apex Court, holding :-

"... The material before the Court thus clearly goes to show that with the help of the scientific advances which have taken place since 1962, the longevity of the cattle and their useful span of life has increased and, therefore, the prescribed age of sixteen years can be said to be a reasonable restriction on the right of the appellants to carry on their trade and profession as mentioned in Article 19(1)(g) of the Constitution...."

In coming to this conclusion, Their Lordships examined the sustainability of the provision contained in the Act in the light of the Directive Principles of Article 48 of the Constitution. According to Their Lordships, the balance between the requirement contemplated by Article 14 and the requirement of a large section of people and traders and dealers has to be struck by the Court.

10. By the impugned Act, Gujarat Act 4 of 1994, a total ban on the slaughter of bulls and bullocks, irrespective of its age, has been imposed. This, according to the petitioners, interferes with their fundamental rights guaranteed under Article 19(1)(g) of the Constitution. Complete ban on slaughter of bulls and bullocks has been termed as an 'unreasonable restriction' on the fundamental right of the petitioners. It is also contended that such a restriction is not in the interest of general public. This contention is met by the learned Additional Advocate General, Gujarat, by urging that the Amendment Act gets the protection of Article 31C of the Constitution. It has been enacted to give effect to the provisions contained in the Directive Principles. The Objects and Reasons of the enactment specifically places

it under the protective umbrella of Article 31C of the Constitution. It is also his case that the various scientific factors highlighted in the reply submitted by the Government show that the longevity of cattle in the State of Gujarat has increased and it is useful to the farmers and the public at large for longer period than 16 years mentioned earlier. So, the enactment is comi...

of the Constitution. The Amending Act, according to the learned Additional Advocate General, is one aimed to secure the ownership and control of material resources of the community so that it is distributed in the best manner to subserve the common good.

11. The Objects and Reasons for enacting the impugned Act, Gujarat Act 4 of 1994, are :-

"... The existing provisions of the Bombay Animal Preservation Act, 1954 provides for prohibition against the slaughter of cow, calf of a cow, and the bulls and bullocks below the age of sixteen years. It is an established fact that the cow and her progeny sustain the health of the nation by giving them the life giving milk which is so essential an item in a scientifically balanced diet.

The economy of the State of Gujarat is still predominantly agricultural. In the agricultural sector, use of animals for milch, draught, breeding or agricultural purposes has great importance. It has, therefore, become necessary to emphasise preservation and protection of agricultural animals like bulls and bullocks. With the growing adoption of non-conventional energy sources like bio-gas plants, even waste material have come to assume considerable value. After the cattle cease to breed or are too old to do work, they still continue to give dung for fuel, manure and bio-gas and, therefore, they cannot be said to...

backbone of Indian agriculture is, in a manner of speaking, the cow and her progeny and have, on their back, the whole structure of the Indian agriculture and its economic system.

In order to give effect to the policy of the State towards securing the principles laid down in articles 47, 48 and clause (b) and (c) of article 39 of the Constitution of India, it was considered necessary also to impose total prohibition against slaughter of progeny of cow...."

12. In the Preamble to the Amending Act, following statements were also made :-

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"... WHEREAS it is established that cow and her progeny sustain the health of the nation by giving them the life giving milk which is so essential an item in a scientifically balanced diet;

AND WHEREAS the working bullocks are indispensable for our agriculture for they supply power more than any other animal;

AND WHEREAS the working bullocks are often useful in ploughing the fields, drawal of water from the wells and also very useful for drawing carts for transporting grains and fodders from the fields to the residences of farmers as well as to the Agricultural Market Yards;

AND WHEREAS the dung of the animal is cheaper than the artificial manures and extremely useful for production of bio-gas;

AND WHEREAS it is established that the backbone of Indian agriculture is, in a manner of speaking, the cow and her progeny and have, on their back, the whole structure of the Indian agriculture and its economic system;

AND WHEREAS it is expedient to give effect to the policy of the State towards securing the principles laid down in articles 47, 48 and in clauses (b) and (c) of article 39 of the Constitution of India and to protect, preserve and sustain cow and its progeny;..."

On the basis of these materials, Additional Advocate General, representing the State, put forth an argument that the impugned enactment has got the protection of

Article 31C of the Constitution. Consequently, if the enactment aims to achieve any of the Directive Principles contained in Part IV of the Constitution, the said enactment is not open to challenge on the ground that it violates Articles 14 and 19 of the Constitution.

13. Article 31C of the Constitution was introduced by the Constitution (Twenty-fifth Amendment) Act, 1971. The Article, as introduced by the said amendment, provided that notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the fundamental rights conferred by Article 14, Article 19 or Article 31. Validity of that Article was upheld by a Constitution Bench of the Supreme Court in *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461. Thereafter, the Sick Textiles (Undertakings) Nationalisation Act, 1974 was passed. Constitutional validity of this enactment was questioned. In that case, it was not open to the petitioner therein to question the correctness or otherwise of the Constitution (Twenty-fifth Amendment) Act, 1971, by which Article 31C was introduced, because that amendment was upheld in *Kesavananda's* case. But, Constitutional validity of Section 4 of the Constitution (Forty-second Amendment) Act, 1976, by which Article 31C was amended, was raised. In the Constitution (Forty-second Amendment) Act, 1976, the words "the principles specified in clause (b) or (c) of Article 39" in Article 31C were replaced by "all or any of the principles laid down in Part IV". The Constitution Bench of the Supreme Court went into the question of the validity of Section 4 of the Constitution (Forty-second Amendment) Act, 1976 in *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789. Majority took the view that Section 4 of the Constitution (Forty-second Amendment) Act, 1976 is beyond the amending power of the Parliament and is void since it damages the basic or essential feature of the Constitution. Again, in *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd.*, AIR 1983 SC 239, Apex Court considered the validity of Article 31C, as amended by the Constitution (Forty-second Amendment) Act, 1976. Differing from the observations made by the Constitution Bench in *Minerva Mills'* case, Apex Court observed that Article 31C, with its extended protection, is also Constitutionally valid. On this basis, learned Additional Advocate General submitted that the impugned Act is aimed to give effect to the Directive Principles contained in clauses (b) and (c) of Article 39 and Articles 47 and 48, and the challenge made under

Articles 14 and 19 of the Constitution must fail.

14. Learned counsel representing the petitioners did not address us on the scope and ambit of Article 31C of the Constitution. According to him, even if the extended meaning that is given to Article 31C under Constitution (Forty-second Amendment) Act, 1976 is operative, the impugned Act will not fall within any of the provisions of the Directive Principles and so, it has to withstand the test of reasonableness. According to the learned counsel, if the impugned enactment does not fall within the four corners of clauses (b) and (c) of Article 39 or Articles 47 and 48, it cannot seek immunity from attack as violative of Articles 14 and 19 of the Constitution. Clauses (b) and (c) of Article 39 relate to distribution of ownership and control of material resources of the community. The Act, claiming protection under Article 31C, on the ground that it falls under clauses (b) and (c) of Article 39, must have operation in the economic system and concentration of wealth. Only when the Court finds that the impugned law has got such relevancy, can it get the protection of Article 31C. The Court has the power to ascertain whether the law impugned is one aimed to give effect to said economic ...

Jaganmohan Reddy, in his judgment in Kesavananda's case, observed :-

"... Though the expression 'economic system' is used in Article 39(c), that article has not the object of changing the economic system generally, but is confined to only preventing concentration of wealth and means of production to the common detriment. What this clause envisages is that the State should secure the operation of the economic system in such a way as not to result in the concentration of wealth and means of production to the common detriment. Where there is already concentration of wealth and means of production which is to the common detriment, the law under Art. 39(c) would be only to break up or regulate as may be necessary the concentration of wealth and means of production. All other rights are outside the purview of Article 31-C...."

This view expressed by the learned Judge has been agreed to by the majority, nay virtually all the Judges in

Kesavananda's case. So, one has to examine whether the said test is satisfied by the impugned Act. The impugned Act does not in any way deal with the concentration of wealth and means of production to the common detriment. No case has been advanced by any one that in case bulls and bullocks above the age of their utility are slaughtered or butchered, it will in...

the concentration of wealth. Thus, learned counsel stated, it is seen that the impugned Act does not fall within the ambit of clauses (b) and (c) of Article 39 of the Constitution. We find much force in this argument.

15. Article 48 was relied on by the learned Additional Advocate General to support the impugned enactment. Article 48 states :-

"... The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle...."

As per this Article, Government are, inter alia, required to take steps to prevent the slaughter of cows and calves and other milch and draught cattle. It does not contemplate ban of slaughter of all types of cattle or bulls and bullocks. The State is to prohibit the slaughter of milch and draught cattle only. It is not to prevent slaughter of all types of cattle. This Article came up for consideration before a Constitution Bench in Mohd. Hanif Quareshi and others v. State of Bihar, AIR 1958 SC 731. According to Their Lordships of the Constitution Bench, the protection is only to those cattle, which yield milk or which can do work. The protection cannot extend to cattle, which at one time were milch or draught cattle. Scope of this Article has been stated to be :-

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"... The protection recommended by this part of the directive is confined only to cows and calves and to those animals which are presently or potentially capable of yielding milk or of doing work as draught cattle but does not, from the very nature of the purpose for which it is obviously

recommended, extend to cattle which at one time were milch or draught cattle but which have ceased to be such...."

Any law, which wants to get the protection of Article 31C read with Article 48, should be in relation to cows and calves and other milch and draught cattle. In other words, the protection claimed under Article 31C to prevent slaughtering o...

cannot have the Constitutional protection. Bulls and bullocks above the age of its utility cannot fall within the purview of Article 48 of the Constitution. The Constitution Bench in AIR 1958 SC 731, after comprehensive examination of all the aspects, came to the conclusion :-

"... (i) that a total ban on the slaughter of cows of all ages and calves of cows and calves of she-buffaloes, male and female, is quite reasonable and valid and is in consonance with the directive principles laid down in Art. 48; (ii) that a total ban on the slaughter of she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they are as milch or draught cattle is also reasonable and valid and (iii) that a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they cease to be capable of yielding milk or of breeding or working as draught animals cannot be supported as reasonable in the interest of the general public...."

16. State of Madhya Pradesh imposed total ban on slaughter of bulls and bullocks by amending M.P. Agricultural Cattle Preservation Act, 1959 by the Amending Act of 1991. Validity of that Act came to be decided by the Supreme Court in Hasmattullah v. State of Madhya Pradesh and others, AIR 1996 SC 2076. While striking down the said Act, Their Lordships took the view that the total ban imposed on slaughter of bulls and bullocks was an unreasonable restriction on the fundamental rights of the appellants therein to carry on their business under Article 19(1)(g) of the Constitution.

17. The Bombay Animal Preservation Act, 1954, as it stood prior to the impugned amendment of 1994, permitted

bulls and bullocks above the age of 16 to be slaughtered in accordance with the provisions contained therein. Age of bulls and bullocks was fixed at 16 because that was the age, upto which they were found useful in rearing or for draught. This view was taken by a Constitution Bench of the Supreme Court in Haji Usmanbhai Hasanbhai Qureshi and others v. The State of Gujarat, AIR 1986 SC 1213.

What Their Lordships said was :-

"... It is clear that because of various scientific factors, namely, better cattle feeding, better medical health and better animal husbandry services, the longevity of cattle in the State of Gujarat has increased and in this context it is correct to say that if the scientific tests were to be applied, bulls and bullocks up to sixteen years of age can be said to be useful for the purpose of breeding, draught and other agricultural purposes...."

In these circumstances, Their Lordships upheld the provision contained in clauses (c) and (d) of sub-section (1A) of Section 5 of the Act as a reasonable balance between the public interest, which requires useful animals to be preserved, and rights of people, who carry on the business in slaughtering such animals.

18. U.P. Prevention of Cow Slaughter Act, Act 1 of 1956, fixed age limit of 20 years for the slaughter of bulls and bullocks. Validity of that provision, along with similar provisions contained in the Bihar and M.P. Acts, came up for consideration before a Constitution Bench of the Supreme Court in Abdul Hakim Quraishi and others v. State of Bihar, AIR 1961 SC 448. Their Lordships dealt with the question as to what is the average longevity of bulls and bullocks and at what age they become useless. While dealing with the issue, reply given by Deputy Minister in the course of debate on the Madhya Pradesh Bill was accepted as the correct view. The Minister stated that the age fixed in the Bill, namely, 20 years, was very much higher than the one to which any bull or bullock survives.

19. In AIR 1961 SC 448, Apex Court took the view that the age of bulls and bullocks fixed in the Act, as the life span of bulls and bullocks, cannot be accepted as the age, upto which they continue to remain useful. The said age of 20 years was held to be very much higher than

the one to which they continue to be useful.

20. Another Constitution Bench in *Haji Usmanbhai Hasanbhai Qureshi and others v. The State of Gujarat*, AIR 1986 SC 1213, came to the conclusion that the useful span of life of a bull or bullock is upto 16 years. On this basis, restriction imposed on the slaughter of bulls and bullocks below the age of 16 in the Gujarat Act was upheld.

21. No document or scientific literature has been brought to our notice by any of the contesting respondents that bulls and bullocks continue to be useful beyond the age of 16 years. They cease to be useful by completing 16 years of age as draught cattle. So, such useless animals cannot get the protection of Article 48 of the Constitution. Ban on slaughter of such bulls and bullocks cannot, therefore, come within the ambit of Article 31C either.

22. No one has got a case that bulls and bullocks are possessed by a few of the citizens and its distribution among the members of the community is the aim of the impugned Act. Viewed in this light, we are clear in our mind that the said Act cannot have the protection of clauses (b) and (c) of Article 39. As stated earlier, they cannot get the protection of Article 48 as well. The other Article, on which reliance was placed by the Additional Advocate General, is Article 47 of the Constitution. That Article enjoins the State to take steps for the improvement of the public health. According to the petitioners, meat is the cheapest protein available to the poor, who are non-vegetarians. For providing this cheap protein, slaughter of bulls and bullocks has to be allowed and it helps the State in giving effect to the Directive Principles contained in Article 47 of the Constitution. In other words, according to counsel representing the petitioners, complete ban on slaughter of bulls and bullocks will only undermine the duty cast on the State by Article 47. This argument appears to be well-founded.

23. Bulls and bullocks owned by citizens can be retained by them without any hindrance. No duty is cast on the owners to sell them to butchers for slaughtering. Only those owners, who want to sell the bulls and bullocks to butchers, are making them available for slaughter. When the slaughter of bulls and bullocks of all ages is prevented by the Act, it interferes with the right of the owners of such bulls and bullocks to sell them. The said interference with their right does not

appear to be a reasonable restriction on their right to carry on business. Viewed in that light also, the complete ban imposed on the slaughter of bulls and bullocks cannot be sustained.

24. The dung and urine that are available from bulls and bullocks above the age of 16, it was argued by the Additional Advocate General and the contesting respondents, are non-conventional sources of energy. They are cheaper manure and are raw material for generating bio-gas. This argument is quite attractive. But, on a closer scrutiny, we are not in a position to agree with these submissions. It is nobody's case that State has made arrangements for collection of dung and urine from the cattle for being used as raw material for generating bio-gas or manure. Manure or bio-gas are to be generated by individual farmer. If he requires the dung and urine of the bulls or bullocks, which have become useless as draught animal, he can retain them and make use of the dung or urine. For the said purpose, a complete ban on slaughter of bulls and bullocks is not warranted.

25. Second respondent in these proceedings is Akhil Bharat Krishi Goseva Sangh. It claims to be a Public Charitable Trust. In its affidavit-in-reply to the contention raised by the petitioners, it gave statistical data regarding the quantity of manure that can be produced from the dung and urine of cattle and the number of bio-gas plants that can be worked. The data now made available to court is silent about the quantity of dung and urine that are available from bulls or bullocks, which have crossed the age of 16. No data is produced in these cases by this respondent that bulls and bullocks above the age of 16 continue to be useful as draught animals. No scientific material has been produced by this respondent to establish the longevity of bulls and bullocks. Averments made in the affidavit filed in reply and the documents produced along with them were produced by this respondent before the Supreme Court in Special Leave Petition (Civil) No.16285 of 1992. All those materials were taken into consideration by the Supreme Court in *Hasmattullah v. State of Madhya Pradesh and others*, AIR 1996 SC 2076. The data produced before the Supreme Court was not accepted. In that case also, the Apex Court specifically came to the conclusion that the usual span of life of the bulls and bullocks is 16 years.

26. In the affidavit filed on behalf of the State by the Deputy Secretary to Government in Agriculture, Cooperation and Rural Development Department, it is

averred that slaughtering of bulls and bullocks for the period between 1990-'91 and 1993-'94 was on an average 9000. This averment has to be accepted because it is based on the data collected by the Government. This means that on an average, 9000 bulls and bullocks above the age of 16 alone are slaughtered in the State of Gujarat. The dung and urine of these animals cannot have any noticeable impact on the non-conventional energy sources available in the State.

27. The impugned amendment of 1994 appears to be an attempt on the part of the State to impose a total ban on the slaughter of bulls and bullocks even after they become old and useless. In that attempt, reference has been made to Article 31C of the Constitution. As seen in the earlier part of this judgment, that attempt has miserably failed, because the amending Act has no nexus with the provisions contained in clauses (b) and (c) of Article 39 or those contained in Articles 47 and 48. The State Government has miserably failed in establishing any type of correlation between the provisions contained in the above Articles in Part IV of the Constitution and the impugned amendment.

28. In view of what has been stated above, we hold that Gujarat Act 4 of 1994, by which the Bombay Animal Preservation Act, 1954, as adopted by Gujarat, was sought to be amended, is ultra vires the Constitution. The amending Act has imposed an unreasonable restriction on the fundamental rights of the petitioners and to that extent, it is ultra vires the Constitution. The effect of this would be that there would not be a total ban on the slaughter of bulls or bullocks above the age of 16 years. In other words, animals can be slaughtered in compliance with the provisions of the Parent Act, as it stood prior to the amendment brought out by Gujarat Act 4 of 1994. Petitions are allowed in the above terms. Rule is made absolute accordingly.

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(apj)